

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WAL-MART STORES, INC.,

Plaintiff,

v.

DON COLEMAN ADVERTISING, INC.,
et al.,

Defendants.

Case No. 2:17-cv-12047

HON. STEPHEN J. MURPHY, III

AMENDED CONSENT JUDGMENT

WHEREAS, the interpleader plaintiff Wal-Mart Stores, Inc., filed an amended complaint (Docket No. 4) seeking to interplead \$281,250.00 under 28 U.S.C. § 1335 and naming as interpleader defendants, Don Coleman Advertising, Inc. d/b/a GlobalHue, John Polderman, in his capacity as state court receiver for Donald Coleman, Ringside Creative, LLC, Comerica Bank, and the United States of America; and,

WHEREAS, Wal-Mart Stores, Inc., deposited the \$281,250.00 in interpleaded funds into the registry of the Court in an interest-bearing account as directed by the Court's order granting plaintiff's motion to deposit funds (Docket No. 23); and,

WHEREAS, Comerica Bank filed a cross-claim against the United States (Docket No. 16) seeking to quiet title to \$1,881,642.41 under 28 U.S.C. § 2410(a); and,

WHEREAS, the total amount of funds at issue in this case was \$2,162,892.41, which includes the \$281,250.00 in interpleaded funds and the \$1,881,642.41 for which Comerica Bank sought to quiet-title; and,

WHEREAS, the parties held a settlement conference on January 11, 2018, at which they reached a settlement agreement; and,

WHEREAS, the parties have agreed to this consent judgment that captures their settlement agreement;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. The United States shall receive \$1,215,000.00 of the total funds at issue.
2. Comerica Bank shall receive the remaining \$947,892.41 of the total funds at issue.
3. The United States and Comerica Bank shall receive a pro rata share of the interest earned on \$281,250.00 in interpleaded funds that were deposited into the Court's registry based on their respective percentages of the total funds at issue. In other words, the United States shall receive 56-percent of the interest earned on the \$281,250.00 in interpleaded funds deposited into the Court's registry and Comerica Bank shall receive the other 44-percent.
4. The Clerk of the Court is directed to distribute the \$281,250.00 in interpleaded funds deposited into the Court's registry plus 100% of the interest accrued thereon, forthwith, by issuing a check for the full amount made payable to "Comerica Bank" and mailed in the care of:

J. Adam Behrendt
Bodman PLC
201 Big Beaver Road, Suite 500
Troy, MI 48084

5. Within 5 days of Comerica Bank receiving the check from the Court, Comerica Bank shall issue a check made payable to the "United States Treasury" in the amount of \$1,215,000.00 plus the 56-percent of the interest earned on the \$281,250.00 in interpleaded funds deposited into the Court's registry. The check must contain a notation

that it is for "Don Coleman Advertising, Inc." The check shall be sent via overnight delivery service (e.g., FedEx or UPS, but not express mail) to:

Section Chief, CTS Northern Region
U.S. Department of Justice, Tax Division
555 4th Street, N.W., Room 7804
Washington, D.C. 20001

6. Comerica Bank shall pay \$15,000.00 to Ringside Creative, LLC, within 14 days after Ringside Creative, LLC, provides Comerica Bank with a completed Form W-9. Comerica Bank shall issue a check made payable to "Ringside Creative, LLC" and mailed in the care of:

Kevin A. Fanning
Clark Hill PLC
151 S. Old Woodward, Suite 200
Birmingham, MI 48009

7. The United States will not seek to hold Comerica Bank liable under 26 U.S.C. § 6332(d) with respect to the funds at issue in this case.

8. The United States will not seek to hold Wal-Mart Stores, Inc. liable under 26 U.S.C. § 6332(d) with respect to the funds at issue in this case.

9. This consent judgment and settlement agreement will not prejudice any right Comerica Bank may have to pursue an action, through a state court-appointed receiver or other lawful means, to challenge Don Coleman Advertising, Inc.'s federal tax liabilities that gave rise to the federal tax liens at issue in this case and/or seek a refund of the payments made towards those tax liabilities.

10. The parties release Wal-Mart Stores, Inc. from all potential liability with respect to the funds at issue in this case to the extent that the parties are collaterally estopped from asserting such liability by the judgment rendered in this case.

11. This consent judgment is without prejudice as to the rights of any of the parties as to matters that did not involve the subject matter of this case.

12. This consent judgment constitutes a final judgment resolving all issues in this case.

SO ORDERED.



STEPHEN J. MURPHY, III
United States District Judge

Dated: February 12, 2018

Agreed as to Substance and Form:

FOR WAL-MART STORES, INC.,
Plaintiff

/s/ (with consent) Nicolle M. Wright
NICOLE M. WRIGHT (P63513)
Zausmer, August & Caldwell, P.C.
32255 Northwestern Hwy, Suite 225
Farmington Hills, MI 48334
(248) 851-4111
nwright@zacfirm.com

FOR RINGSIDE CREATIVE, LLC,
Defendant/Cross-Claim Defendant

/s/ (with consent) Kevin A. Fanning
KEVIN A. FANNING (P57125)
Clark Hill PLC
151 S. Old Woodward, Suite 200
Birmingham, MI 48009
(248) 642-9692
kfanning@clarkhill.com

FOR JOHN POLDERMAN,
Defendant/Cross-Claim Defendant

/s/ (with consent) John W. Polderman
JOHN W. POLDERMAN (P65720)
Simon PLC Attorneys & Counselors
37000 Woodward Avenue, Suite 250
Bloomfield Hills, MI 48304
(248) 720-0290
jpolderman@simonattys.com

FOR COMERICA BANK,
Defendant/Cross-Claim Plaintiff

/s/ (with consent) J. Adam Behrendt
J. ADAM BEHRENDT (P58607)
Bodman PLC
201 W. Big Beaver Road, Suite 500
Troy, MI 48084
(248) 743-6068
jbehrendt@bodmanlaw.com

FOR THE UNITED STATES,
Defendant/Cross-Claim Defendant

/s/ Carl L. Moore
CARL L. MOORE
Trial Attorney
U.S. Department of Justice, Tax Division
P.O. Box 55 – Ben Franklin Station
Washington, DC 20044
(202) 307-5892
Carl.L.Moore@usdoj.gov